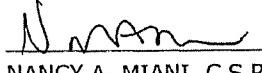


	187		189
1	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY CIVIL ACTION CASE NO. 2:08-CV-1567		
2			
3	DR. FADI CHAABAN; DR. SABINO R. TORRE, DR. CONSTANTINOS A. COSTEAS and DR. ANTHONY J. CASELLA, as Trustee of Diagnostic & Clinical Cardiology, P.A. Profit Sharing Plan,		
4			
5	Plaintiffs,		
6			
7	vs.		
8	DR. MARIO A. CRISCITO, Defendant.		
9			
10	Wednesday, July 15, 2009		
11	Deposition of BRIAN WARNOCK, VOLUME II,		
12	before Nancy A. Miani, a Certified Court Reporter,		
13	License No. XI00814, and a Notary Public of the State		
14	of New Jersey at the offices of WITMAN, STADTMUER,		
15	ESQS, 26 Columbia Turnpike, Florham Park, New Jersey,		
16	on Wednesday, July 15, 2009, at 10:10 a.m.		
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21	MIAMI COURT REPORTING CERTIFIED COURT REPORTERS 1741 DANIEL COURT WALL, NJ 07719 (732) 681-1776		
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	188		
1	A P P E A R A N C E S :		
2	WITMAN, STADTMUER, ESQS. 26 Columbia Turnpike Florham Park, NJ 07932		
3	By: STEPHEN M. CHARME, ESQ.		
4	Attorneys for the Plaintiffs		
5	KERN, CONROY & SCHOPPMANN, P.C. 1120 Route 22 East Bridgewater, NJ 08807		
6	BY: STEVEN KERN, ESQ.		
7	AND CHARLES H. NEWMAN, ESQ. Attorneys for the Defendant		
8			
9	ALSO PRESENT:		
10	Anthony Casella, M.D.		
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	189		
1		<u>I N D E X</u>	
2	WITNESS	CROSS	REDIRECT
3	BRIAN WARNOCK		RECROSS
4	BY MR. KERN	192	
5			352
			381
			383
6			
7	BY MR. CHARME		307
			377
			383
8			384
9			
10		<u>E X H I B I T S</u>	
11	EXHIBIT NO.	DESCRIPTION	PAGE
12	Warnock-22	Diagnostic & Clinical Cardiology, PA, Annual Report And Participant Statement	214 12/31/00
13			
14	Warnock-23	Three-Page Letter from Brian Warnock dated 6/30/09 and Attachments	218
15			
16	Warnock-24	DCC Plan Document 12/31/99	246
17			
18	Warnock-25	One-Page Letter to Dr. Criscito From Dominique Eck dated 11/23/99 and One-Page Attachment	294
19			
20	Warnock-26	One-Page Letter from Peter Coughlan and One-Page Attachment	306
21			
22	Warnock-27	Employee Census, 4/1/89 ~ 3/31/90	315
23			
24	Warnock-28	One-Page Letter to Dr. Casella From Donald Cuny dated 8/23/91	316
25			
	190		
1		<u>E X H I B I T S</u>	
2	EXHIBIT NO.	DESCRIPTION	PAGE
3	Warnock-29	One Page of Handwritten Notes	318
4	Warnock-30	One-Page Memo to Mario Criscito From Brian Warnock dated 5/15/94 And Three-Page Attachment	319
5			
6	Warnock-31	One-Page Letter to Dr. Criscito From Peter Coughlan dated 10/7/93 And One-Page Attachment	320
7			
8	Warnock-32	Excerpt from DCC Money-Purchase Pension Plan effective 4/1/76	373
9			
10	Warnock-33	Signature Page, Date Stamp 7700	382
11			
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<p>1                   <u>LITIGATION SUPPORT</u></p> <p>2                   DIRECTION NOT TO ANSWER</p> <p>3                    (None)</p> <p>4                   MOTION TO STRIKE</p> <p>5                    (None)</p> <p>6                   DOCUMENT REQUEST</p> <p>7                   207-21   278-12   361-22</p> <p>8                   236-22   279-7    362-8</p> <p>9                   262-9    284-18   369-4</p> <p>10                  270-13   293-2</p> <p>11                  271-15   359-3</p> <p>12</p> <p>13                  EXHIBIT ANALYSIS</p> <p>14                  Original Exhibits Warnock 22 through Warnock-33 are attached to Original Transcript.</p> <p>15</p> <p>16                  Copies of exhibits attached to transcripts.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>191</p> <p>1       We don't always necessarily get a signed copy.</p> <p>2       Q.   How would you get a signed copy?</p> <p>3       A.   We ask them to send us a signed copy just</p> <p>4       so we have it in our file as evidence that it was</p> <p>5       done, but some people send it back, some people don't.</p> <p>6       Q.   If we go to Page 259 -- no number on this</p> <p>7       one. The fifth page, one, two, three, four -- fifth</p> <p>8       page.</p> <p>9       A.   25959.</p> <p>10      MR. KERN: Is there a stamp on this one?</p> <p>11      MR. CHARME: I don't see it.</p> <p>12      Q.   It's the fifth page of what's been marked</p> <p>13      Warnock-8. It doesn't have a Bate stamp on it.</p> <p>14      A.   All right.</p> <p>15      Q.   Is it your testimony that this form would</p> <p>16      have gone to Dr. Criscito unsigned, and he would have</p> <p>17      returned it to you with a signature, a copy to you</p> <p>18      with a signature?</p> <p>19      A.   He would send us one page. We send him</p> <p>20      the forms to sign, send the whole package into the</p> <p>21      IRS, and then we send one page, one blank first page</p> <p>22      for him to sign and send back to us, and that way we</p> <p>23      have it in the file, and it's really for if the IRS</p> <p>24      ever asks, A, we didn't get the form or whatever, we</p> <p>25      got it late, we can say no, he filed it on this day,</p>
<p>1       B R I A N   W A R N O C K ,</p> <p>2       American Pension Corporation, 1375 Plainfield Avenue,</p> <p>3       Watchung, New Jersey, resworn.</p> <p>4       CONTINUED CROSS EXAMINATION BY MR. KERN:</p> <p>5       Q.   I want to begin by turning to what's been</p> <p>6       previously marked Warnock-8.</p> <p>7       A.   Okay.</p> <p>8       Q.   Can I start? Okay. Now, is this a copy</p> <p>9       of the 5500 that was in your file?</p> <p>10      A.   Yes. Yes.</p> <p>11      Q.   I note that on the third page of this</p> <p>12      exhibit, marked 25958, there is no signature of the</p> <p>13      employer or plan sponsor. Do you know why that is?</p> <p>14      A.   No, I don't.</p> <p>15      Q.   And who was the plan sponsor?</p> <p>16      A.   Well, the employer would be, so an</p> <p>17      officer of Diagnostic would sign.</p> <p>18      Q.   I also note on the first page of the</p> <p>19      document that there is no signature of either the plan</p>	<p>192</p> <p>194</p> <p>1       and he even sent us a copy saying -- with the same</p> <p>2       date. That's the reason we ask for it.</p> <p>3       Q.   You see the signatures on the bottom of</p> <p>4       this page?</p> <p>5       A.   Yes, I do.</p> <p>6       Q.   Do they appear to be two different</p> <p>7       signatures, the signature of the second individual?</p> <p>8       A.   I would think they were the same.</p> <p>9       Q.   They don't look different to you?</p> <p>10      MR. CHARME: Asked and answered.</p> <p>11      Objection.</p> <p>12      Q.   They don't look different to you?</p> <p>13      A.   One has an A in it and one doesn't.</p> <p>14      Q.   Let's go down two more pages. This is</p> <p>15      another page which is not Bate stamped, but on the</p> <p>16      bottom page it says October 19th, 2004. Do you have</p> <p>17      that one? Again, two signatures?</p> <p>18      A.   Yes.</p> <p>19      Q.   Do they appear to be the same signature</p>
<p>20      administrator or of the employer, plan sponsor, right?</p> <p>21      A.   That is correct.</p> <p>22      Q.   That was 25946. Would this have gone out</p> <p>23      to the IRS in this form?</p> <p>24      A.   No. We send the forms to Dr. Criscito or</p> <p>25      to the employer. He signs it, sends it into the IRS.</p>	<p>20      of the same person?</p> <p>21      A.   They do look somewhat different, somewhat</p> <p>22      the same.</p> <p>23      Q.   Do you have any explanation for it?</p> <p>24      A.   No idea.</p> <p>25      Q.   Okay. Let's go then to Warnock-9.</p>

	195		197
1	A. Okay.	1	that was still money for that person in the account?
2	Q. This is a report that you believe you	2	A. If no one took a distribution, yes.
3	received from Dr. Criscito in 1998?	3	Q. Speaking of that, was there anything in
4	A. Yes.	4	the plan documents which precluded somebody from
5	Q. And it indicates that there are monies in	5	participating both in a segregated account and in a
6	this commingled account in a number of different	6	commingled account?
7	repositories, correct?	7	A. No.
8	A. Correct.	8	Q. They could have money in both?
9	Q. Was there ever a time when there was a	9	A. Could be.
10	determination that monies, for example, in Dean Witter	10	Q. All right. Let's go to the next page.
11	belonged to certain participants, and monies that	11	Do you know when this was received by APC?
12	belonged in Schwab belonged to other participants, or	12	A. I don't know exactly, but it would have
13	was this, for your purposes, treated as one pool of	13	been part of the 2000 report. So it would have been
14	money?	14	received sometime in 2001.
15	MR. CHARME: I object to the form.	15	Q. Do you know who crossed out '99 and put
16	A. It was one pool of money.	16	in 2000?
17	Q. All right. And did that hold true during	17	A. That's my cross out, yes.
18	the entire period that you were involved in this	18	Q. That's your handwriting?
19	account?	19	A. Yes.
20	MR. CHARME: Same objection to the form.	20	Q. Do you know who prepared this document?
21	A. It would hold true for the commingled	21	A. This would have come from Dr. Criscito.
22	account, yes. We did get a separate report, for	22	Q. Do you know how it was received?
23	example, for Dr. Casella, completely --	23	A. Could have been mailed, could have been
24	Q. I'm just talking about the commingled	24	faxed. Either one.
25	account.	25	Q. Was there a cover page that came with it?
	196		198
1	A. Right.	1	A. Looking at that one page, I don't know.
2	Q. So whether the money was in Dean Witter,	2	Q. So how would you know it came from Dr.
3	in Schwab, in Smith Barney, in Morgan Stanley, your	3	Criscito?
4	only concern was the totality of the money, and it	4	A. Because that's the information that he
5	wasn't as though one participant's money was part of	5	would send us, we would use that format. If I went
6	the Dean Witter account, and another person's money	6	back in the files, and -- probably, not necessarily,
7	was part of the Schwab account, the third	7	but I might find the cover page with it.
8	participant's money was part of the Morgan Stanley	8	Q. Well, this wasn't the format that he used
9	account, right?	9	in 1999, correct?
10	MR. CHARME: Objection to form.	10	A. He did -- I'd have to look at the '99
11	A. That is correct, it was all just one big	11	file.
12	pot.	12	Q. Warnock-10.
13	Q. So when it came time to determining a	13	A. Warnock-10. No. It's not exactly the
14	distribution number, or how much money was -- when it	14	same.
15	came time to distributing money out of the commingled	15	Q. And there's no fax stamp on this,
16	account, it was the total pool of money that was at	16	correct?
17	issue, correct?	17	A. 25870 there is not. There is one on
18	A. Correct.	18	25957. And on 25997.
19	Q. And in determining how much money was	19	Q. You say there's a fax on 25957?
20	still in the commingled account for an individual,	20	A. No. 25957 there is a fax stamp on the
21	that was also based upon the totality of money in all	21	bottom.
22	of the accounts, correct?	22	Q. Not on my copy. Okay. And 997?
23	MR. CHARME: I object to the form.	23	A. 997 there is also a fax stamp with Mario
24	A. I'm not sure of the question.	24	Criscito.
25	Q. If somebody didn't take a distribution,	25	Q. But none on 25870?

	383		385
1	Q. Finally, you previously testified that an active participant could maintain monies in both the commingled account and in the segregated account, correct?	1	Criscito maintained an individual segregated account at Smith Barney?
2	A. It would be legal to do it, yes.	3	A. For himself?
3	Q. Nothing which would have precluded that, correct?	4	Q. For himself.
4	A. There's nothing to preclude that no.	5	A. No.
5	MR. KERN: I have nothing further.	6	MR. CHARME: No further questions.
6	A. It would be unusual, but there's nothing to preclude it, no.	7	MR. KERN: No further questions.
7	MR. KERN: I have nothing further. Thank you.	8	(At 4:40 p.m., the deposition is adjourned.)
8	MR. CHARME: I have one quick question.	9	
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	384		386
1	both the commingled account and a segregated account for that individual, right?	1	<u>C E R T I F I C A T I O N</u>
2	A. That is correct. But no one intentionally was in both accounts.	2	
3	Q. As far as you know?	3	
4	A. As far as I know, for sure, no one was intentionally in the commingled account and the segregated account because nobody said keep half of my money in the commingled account, put half of my money in a separate account.	4	
5	Q. I understand. That commingled account was maintained at least through 1995 -- at least through 2005, correct?	5	I, NANCY A. MIANI, a Certified Court Reporter
6	A. Yes, it was a small balance left in the 2005.	6	and a Notary Public, License No. XI00814, do hereby
7	Q. You don't know how much was in the Smith Barney account in 2005, though, do you?	7	certify that the foregoing witness, ^ , was duly sworn
8	A. No. What we had, it was just --	8	by me on the date indicated, and that the foregoing is
9	Q. Do you know what the name on the Smith Barney account is until this very day?	9	a true and accurate transcription of my stenographic notes.
10	A.	10	I further certify that I am not employed by
11	MR. KERN: I have nothing further.	11	nor related to any party to this action.
12	MR. CHARME: I have one quick question.	12	
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16	16	16	 NANCY A. MIANI, C.S.R. LICENSE NO. XI00814
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